

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

MITCHELL GLENN COHEN, M.D.)

Case No. 800-2016-020349

Physician's & Surgeon's
Certificate No. G64294)

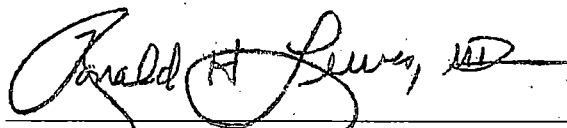
Respondent.)

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN ORDER DATE AND EFFECTIVE DATE OF DECISION**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error reflecting the order date and effective date of the Decision in the above-entitled matter, and that such clerical error should be corrected.

IT IS HEREBY ORDERED that the Decision in the above-entitled matter be and is hereby amended and corrected nunc pro tunc to reflect that the Decision is ordered May 7, 2019 and the effective date is June 6, 2019.

IT IS SO ORDERED May 7, 2019.



Ronald H. Lewis, M.D., Chair
Panel A
Medical Board of California

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 State Bar No. 71375
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4 300 So. Spring Street, Suite 1702
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6 *Attorneys for Complainant*

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

Case No. 800-2016-020349

13 **MITCHELL GLENN COHEN, M.D.**
14 **11160 Warner Avenue, #305**
Fountain Valley, CA 92708

OAH No. 2018110288

15 **Physician's and Surgeon's Certificate No.**
16 **G64294,**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by E. A. Jones III,
24 Supervising Deputy Attorney General.

25 2. Respondent Mitchell Glenn Cohen, M.D. (Respondent) is represented in this
26 proceeding by attorney Fredrick M. Ray, whose address is: Fredrick M. Ray, Ray & Bishop,
27 PLC, 5000 Birch Street, Suite 7000, Newport Beach, CA 92660-2127.

28 3. On or about October 11, 1988, the Board issued Physician's and Surgeon's Certificate

1 No. G64294 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect
2 at all times relevant to the charges brought in Accusation No. 800-2016-020349, and will expire
3 on July 31, 2020, unless renewed.

4 JURISDICTION

5 4. Accusation No. 800-2016-020349 was filed before the Board, and is currently
6 pending against Respondent. The Accusation and all other statutorily required documents were
7 properly served on Respondent on August 11, 2016. Respondent timely filed his Notice of
8 Defense contesting the Accusation.

9 5. A copy of Accusation No. 800-2016-020349 is attached as exhibit A and incorporated
10 herein by reference.

11 ADVISEMENT AND WAIVERS

12 6. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 800-2016-020349. Respondent has also carefully read,
14 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
15 Disciplinary Order.

16 7. Respondent is fully aware of his legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
18 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
19 to the issuance of subpoenas to compel the attendance of witnesses and the production of
20 documents; the right to reconsideration and court review of an adverse decision; and all other
21 rights accorded by the California Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 800-2016-020349.

27 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
28 discipline and he agrees to be bound by the Board's probationary terms as set forth in the

1 Disciplinary Order below.

2 CIRCUMSTANCES IN MITIGATION

3 11. Respondent has never been the subject of any disciplinary action. He is admitting
4 responsibility at an early stage in the proceedings.

5 RESERVATION

6 12. The admissions made by Respondent herein are only for the purposes of this
7 proceeding, or any other proceedings in which the Medical Board of California or other
8 professional licensing agency is involved, and shall not be admissible in any other criminal or
9 civil proceeding.

10 CONTINGENCY

11 13. This stipulation shall be subject to approval by the Medical Board of California.
12 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
13 Board of California may communicate directly with the Board regarding this stipulation and
14 settlement, without notice to or participation by Respondent or his counsel. By signing the
15 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
16 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
17 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
18 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
19 action between the parties, and the Board shall not be disqualified from further action by having
20 considered this matter.

21 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
22 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
23 signatures thereto, shall have the same force and effect as the originals.

24 15. In consideration of the foregoing admissions and stipulations, the parties agree that
25 the Board may, without further notice or formal proceeding, issue and enter the following
26 Disciplinary Order:

27 DISCIPLINARY ORDER

28 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G64294 issued

1 to Respondent Mitchell Glenn Cohen, M.D. is revoked. However, the revocation is stayed and
2 Respondent is placed on probation for seven (7) years on the following terms and conditions.

3 1. COMMUNITY SERVICE - FREE SERVICES. Within 60 calendar days of the
4 effective date of this Decision, Respondent shall submit to the Board or its designee for prior
5 approval a community service plan in which Respondent shall, within the first 2 years of
6 probation, provide 100 hours of free services (e.g., medical or nonmedical) to a community or
7 non-profit organization.

8 Prior to engaging in any community service, Respondent shall provide a true copy of the
9 Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief
10 executive officer at every community or non-profit organization where Respondent provides
11 community service and shall submit proof of compliance to the Board or its designee within 15
12 calendar days. This condition shall also apply to any change(s) in community service.

13 Community service performed prior to the effective date of the Decision shall not be
14 accepted in fulfillment of this condition.

15 2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
16 the effective date of this Decision, Respondent shall enroll in a professionalism program that
17 meets the requirements of title 16, California Code of Regulations (CCR) section 1358.1.
18 Respondent shall participate in and successfully complete that program. Respondent shall
19 provide any information and documents that the program may deem pertinent. Respondent shall
20 successfully complete the classroom component of the program not later than six (6) months after
21 Respondent's initial enrollment, and the longitudinal component of the program not later than the
22 time specified by the program, but no later than one (1) year after attending the classroom
23 component. The professionalism program shall be at Respondent's expense and shall be in
24 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

25 A professionalism program taken after the acts that gave rise to the charges in the
26 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
27 or its designee, be accepted towards the fulfillment of this condition if the program would have
28 been approved by the Board or its designee had the program been taken after the effective date of

1 this Decision.

2 Respondent shall submit a certification of successful completion to the Board or its
3 designee not later than 15 calendar days after successfully completing the program or not later
4 than 15 calendar days after the effective date of the Decision, whichever is later.

5 3. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of
6 this Decision, and on whatever periodic basis thereafter may be required by the Board or its
7 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
8 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
9 consider any information provided by the Board or designee and any other information the
10 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its
11 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not
12 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
13 psychiatric evaluations and psychological testing.

14 Respondent shall comply with all restrictions or conditions recommended by the evaluating
15 psychiatrist within 15 calendar days after being notified by the Board or its designee.

16 4. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the
17 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board
18 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician
19 who shall consider any information provided by the Board or designee and any other information
20 the evaluating physician deems relevant and shall furnish a medical report to the Board or its
21 designee. Respondent shall provide the evaluating physician with any information and
22 documentation that the evaluating physician may deem pertinent.

23 Following the evaluation, Respondent shall comply with all restrictions or conditions
24 recommended by the evaluating physician within 15 calendar days after being notified by the
25 Board or its designee. If Respondent is required by the Board or its designee to undergo medical
26 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the
27 Board or its designee for prior approval the name and qualifications of a California licensed
28 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent

1 shall within 15 calendar days undertake medical treatment and shall continue such treatment until
2 further notice from the Board or its designee.

3 The treating physician shall consider any information provided by the Board or its designee
4 or any other information the treating physician may deem pertinent prior to commencement of
5 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or
6 its designee indicating whether or not the Respondent is capable of practicing medicine safely.
7 Respondent shall provide the Board or its designee with any and all medical records pertaining to
8 treatment that the Board or its designee deems necessary.

9 If, prior to the completion of probation, Respondent is found to be physically incapable of
10 resuming the practice of medicine without restrictions, the Board shall retain continuing
11 jurisdiction over Respondent's license and the period of probation shall be extended until the
12 Board determines that Respondent is physically capable of resuming the practice of medicine
13 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

14 5. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective
15 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
16 practice and billing monitor(s), the name and qualifications of one or more licensed physicians
17 and surgeons whose licenses are valid and in good standing, and who are preferably American
18 Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current
19 business or personal relationship with Respondent, or other relationship that could reasonably be
20 expected to compromise the ability of the monitor to render fair and unbiased reports to the
21 Board, including but not limited to any form of bartering, shall be in Respondent's field of
22 practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring
23 costs.

24 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
25 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
26 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
27 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
28 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees

1 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
2 signed statement for approval by the Board or its designee.

3 Within 60 calendar days of the effective date of this Decision, and continuing throughout
4 probation, Respondent's practice and billing shall be monitored by the approved monitor.
5 Respondent shall make all records available for immediate inspection and copying on the
6 premises by the monitor at all times during business hours and shall retain the records for the
7 entire term of probation.

8 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
9 date of this Decision, Respondent shall receive a notification from the Board or its designee to
10 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
11 shall cease the practice of medicine until a monitor is approved to provide monitoring
12 responsibility.

13 The monitor(s) shall submit a quarterly written report to the Board or its designee which
14 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
15 are within the standards of practice of medicine and billing, and whether Respondent is practicing
16 medicine safely and billing appropriately. It shall be the sole responsibility of Respondent to
17 ensure that the monitor submits the quarterly written reports to the Board or its designee within
18 10 calendar days after the end of the preceding quarter.

19 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
20 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
21 name and qualifications of a replacement monitor who will be assuming that responsibility within
22 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
23 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
24 notification from the Board or its designee to cease the practice of medicine within three (3)
25 calendar days after being so notified. Respondent shall cease the practice of medicine until a
26 replacement monitor is approved and assumes monitoring responsibility.

27 In lieu of a monitor, Respondent may participate in a professional enhancement program
28 approved in advance by the Board or its designee that includes, at minimum, quarterly chart

1 review, semi-annual practice assessment, and semi-annual review of professional growth and
2 education. Respondent shall participate in the professional enhancement program at Respondent's
3 expense during the term of probation.

4 6. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
5 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
6 where: 1) Respondent merely shares office space with another physician but is not affiliated for
7 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
8 location.

9 If Respondent fails to establish a practice with another physician or secure employment in
10 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
11 Respondent shall receive a notification from the Board or its designee to cease the practice of
12 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
13 practice until an appropriate practice setting is established.

14 If, during the course of the probation, the Respondent's practice setting changes and the
15 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
16 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
17 If Respondent fails to establish a practice with another physician or secure employment in an
18 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
19 shall receive a notification from the Board or its designee to cease the practice of medicine within
20 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
21 appropriate practice setting is established.

22 7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
23 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
24 Chief Executive Officer at every hospital where privileges or membership are extended to
25 Respondent, at any other facility where Respondent engages in the practice of medicine,
26 including all physician and locum tenens registries or other similar agencies, and to the Chief
27 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
28 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15

1 calendar days.

2 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

3 8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
4 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
5 advanced practice nurses.

6 9. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
7 governing the practice of medicine in California and remain in full compliance with any court
8 ordered criminal probation, payments, and other orders.

9 10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
10 under penalty of perjury on forms provided by the Board, stating whether there has been
11 compliance with all the conditions of probation.

12 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
13 of the preceding quarter.

14 11. GENERAL PROBATION REQUIREMENTS.

15 Compliance with Probation Unit

16 Respondent shall comply with the Board's probation unit.

17 Address Changes

18 Respondent shall, at all times, keep the Board informed of Respondent's business and
19 residence addresses, email address (if available), and telephone number. Changes of such
20 addresses shall be immediately communicated in writing to the Board or its designee. Under no
21 circumstances shall a post office box serve as an address of record, except as allowed by Business
22 and Professions Code section 2021(b).

23 Place of Practice

24 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
25 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
26 facility.

27 License Renewal

28 Respondent shall maintain a current and renewed California physician's and surgeon's

1 license.

2 Travel or Residence Outside California

3 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
4 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
5 (30) calendar days.

6 In the event Respondent should leave the State of California to reside or to practice,
7 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
8 departure and return.

9 12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
10 available in person upon request for interviews either at Respondent's place of business or at the
11 probation unit office, with or without prior notice throughout the term of probation.

12 13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
13 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
14 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
15 defined as any period of time Respondent is not practicing medicine as defined in Business and
16 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
17 patient care, clinical activity or teaching, or other activity as approved by the Board. If
18 Respondent resides in California and is considered to be in non-practice, Respondent shall
19 comply with all terms and conditions of probation. All time spent in an intensive training
20 program which has been approved by the Board or its designee shall not be considered non-
21 practice and does not relieve Respondent from complying with all the terms and conditions of
22 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
23 on probation with the medical licensing authority of that state or jurisdiction shall not be
24 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
25 period of non-practice.

26 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
27 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
28 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program

1 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
2 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

3 Respondent's period of non-practice while on probation shall not exceed two (2) years.

4 Periods of non-practice will not apply to the reduction of the probationary term.

5 Periods of non-practice for a Respondent residing outside of California will relieve
6 Respondent of the responsibility to comply with the probationary terms and conditions with the
7 exception of this condition and the following terms and conditions of probation: Obey All Laws;
8 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
9 Controlled Substances; and Biological Fluid Testing.

10 14. COMPLETION OF PROBATION. Respondent shall comply with all financial
11 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
12 completion of probation. Upon successful completion of probation, Respondent's certificate shall
13 be fully restored.

14 15. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
15 of probation is a violation of probation. If Respondent violates probation in any respect, the
16 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
17 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke
18 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
19 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
20 be extended until the matter is final.

21 16. LICENSE SURRENDER. Following the effective date of this Decision, if
22 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
23 the terms and conditions of probation, Respondent may request to surrender his or her license.
24 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
25 determining whether or not to grant the request, or to take any other action deemed appropriate
26 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
27 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
28 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject

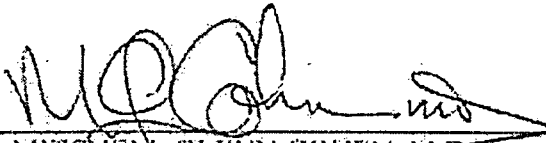
1 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
2 application shall be treated as a petition for reinstatement of a revoked certificate.

3 17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
4 with probation monitoring each and every year of probation, as designated by the Board, which
5 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
6 California and delivered to the Board or its designee no later than January 31 of each calendar
7 year.

8 ACCEPTANCE

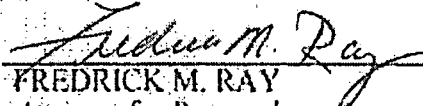
9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
10 discussed it with my attorney, Fredrick M. Ray. I understand the stipulation and the effect it will
11 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
12 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
13 Decision and Order of the Medical Board of California.

14
15 DATED: 3/18/2019


16 MITCHELL GLENN COHEN, M.D.
Respondent

17 I have read and fully discussed with Respondent MITCHELL GLENN COHEN, M.D. the
18 terms and conditions and other matters contained in the above Stipulated Settlement and
19 Disciplinary Order. I approve its form and content.

20
21 DATED: 3/19/19


22 FREDRICK M. RAY
Attorney for Respondent

23
24 ENDORSEMENT

25 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
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27
28

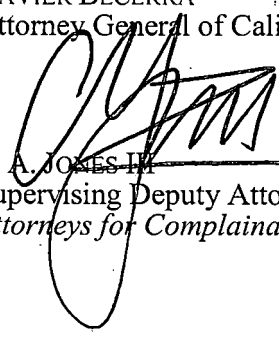
1 submitted for consideration by the Medical Board of California.

2
3 Dated:

3/19/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California


E. A. JONES III
Supervising Deputy Attorney General
Attorneys for Complainant

11 LA2016501758
12 53271449.docx

Exhibit A

Accusation No. 800-2016-020349

1 KAMALA D. HARRIS
Attorney General of California
2 E. A. JONES III
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug 11 20 16
BY [Signature] ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2016-020349

12 **Mitchell Glenn Cohen, M.D.**
13 **11160 Warner Avenue, #305**
Fountain Valley, CA 92708

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. G64294,**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs (Board).

23 2. On or about October 11, 1988, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G64294 to Mitchell Glenn Cohen, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein
26 and will expire on July 31, 2018, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board, under the authority of the following

1 laws. All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2229, subdivision (a), of the Code states:

3 "Protection of the public shall be the highest priority for the Division of Medical Quality,¹
4 the California Board of Podiatric Medicine, and administrative law judges of the Medical Quality
5 Hearing Panel in exercising their disciplinary authority."

6 5. Section 2227 of the Code provides that a licensee who is found guilty under the
7 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
8 one year, placed on probation and required to pay the costs of probation monitoring, or such other
9 action taken in relation to discipline as the Board deems proper.

10 6. Section 2234 of the Code, states:

11 "The board shall take action against any licensee who is charged with unprofessional
12 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
13 limited to, the following:

14 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
15 violation of, or conspiring to violate any provision of this chapter.

16 "...

17 "(e) The commission of any act involving dishonesty or corruption which is substantially
18 related to the qualifications, functions, or duties of a physician and surgeon.

19 "..."

20 7. Section 2236 of the Code states:

21 A(a) The conviction of any offense substantially related to the qualifications, functions, or
22 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
23 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
24 evidence only of the fact that the conviction occurred.

25 "...

26 "(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours

27 ¹ Pursuant to Business and Professions Code section 2002, the "Division of Medical
28 Quality" or "Division" shall be deemed to refer to the Medical Board of California.

1 after the conviction, transmit a certified copy of the record of conviction to the board. The
2 division may inquire into the circumstances surrounding the commission of a crime in order to fix
3 the degree of discipline or to determine if the conviction is of an offense substantially related to
4 the qualifications, functions, or duties of a physician and surgeon.

5 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
6 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
7 shall be conclusive evidence of the fact that the conviction occurred.”

8 8. California Code of Regulations, title 16, section 1360, states:

9 AFor the purposes of denial, suspension or revocation of a license, certificate or permit
10 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
11 considered to be substantially related to the qualifications, functions or duties of a person holding
12 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
13 evidences present or potential unfitness of a person holding a license, certificate or permit to
14 perform the functions authorized by the license, certificate or permit in a manner consistent with
15 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
16 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
17 violation of, or conspiring to violate any provision of the Medical Practice Act.®

18 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
19 revoke a license on the ground that the licensee has been convicted of a crime substantially related
20 to the qualifications, functions, or duties of the business or profession for which the license was
21 issued.

22 10. Section 493 of the Code states:

23 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
24 the department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Conviction of Substantially Related Crime)**

8 11. Respondent Mitchell Glenn Cohen, M.D. is subject to disciplinary action under
9 sections 2236 and 490 in that on December 18, 2015, he was convicted of a crime substantially
10 related to the practice of medicine. The circumstances are as follows:

11 12. On or about November 16, 2015, in *United States of America v. Mitchell G. Cohen*,
12 United States District Court for the Central District of California, Southern Division, Case
13 Number SACR15-00142, the United States Attorney filed an Information charging Respondent
14 with Making and Subscribing to a False Tax Return in violation of Title 26 of the United States
15 Code, section 7206(1). The information alleged that on or about February 21, 2012, Respondent

16 "willfully made and subscribed to a false United States Individual Income Tax
17 Return, Form 1040, for the calendar year 2011, which was verified by written declaration
18 that it was made under the penalties of perjury, which was filed with the Internal Revenue
19 Service, and which [he] did not believe to be true and correct as to every material matter, in
20 that [he] falsely reported, on line 22 of such Form 1040, that his total income for the
21 calendar year 2011 was \$337,678, when, in truth and in fact, as [he] then well knew and
22 believed, his total income for the calendar year 2011 was substantially higher."

23 13. Also on or about November 16, 2015, in *United States of America v. Mitchell G.*
24 *Cohen*, United States District Court for the Central District of California, Southern Division, Case
25 Number SACR15-00142, a twenty-seven page plea agreement² between Respondent and the
26 United States Attorney's Office for the Central District of California was filed. The plea

27 _____
28 ² A draft information is attached to the plea agreement, making it 29 pages total.

1 agreement was executed on November 11, 2015.

2 14. In the plea agreement, generally, Respondent agreed: to appear and plead guilty to
3 one count of Subscribing to a False Tax Return in violation of Title 26 of the United States Code,
4 section 7206(1); to not seek discharge in bankruptcy proceedings of any restitution he is ordered
5 to pay to the IRS; to not challenge any collection attempts by the IRS of ordered restitution; to
6 cooperate with the IRS, file corrected amended tax returns and pay additional taxes, penalties and
7 interest for calendar years 2009 through 2012; to accept the Court's forfeiture order not exceeding
8 \$1,645,255; to truthfully disclose to law enforcement officials all known information about his
9 assets and any money, property or asset derived from or related to his illegal activities; to
10 maintain control of his assets and assist their forfeiture and transfer to the United States; and to
11 cooperate fully with federal entities including the USAO, FBI, US Postal Service – Office of
12 Inspector General and IRS and as directed by the USAO; "any other federal, state, local or foreign
13 prosecuting, enforcement, administrative or regulatory authority, including: attending requested
14 meetings, trials or proceedings; truthfully and completely responding to questions in interviews or
15 court proceedings; producing requested documents or evidence."

16 15. In the plea agreement, generally, the United States Attorney's Office agreed: to not
17 criminally prosecute Respondent further (beyond the single count alleged in the Information) for
18 admissions described in the "Factual Basis" section of the agreement; at sentencing, to seek
19 specified reduction in the applicable Sentencing Guidelines offense level, provided Respondent
20 has demonstrated acceptance of responsibility for the charged offense; at sentencing, to restrict
21 use of information and evidence that Respondent provided to comply with his obligation to
22 cooperate fully with federal entities as described above; at sentencing, to highlight to the Court
23 Respondent's cooperation; at sentencing, to move the Court to fix an offense level and
24 corresponding guideline range below what the Sentencing Guidelines would otherwise require
25 and in the Sentencing Guidelines below, and to recommend the Court sentence within the reduced
26 range.

27 16. On or about December 18, 2015, there was a change of plea hearing in *United States*
28 *of America v. Mitchell G. Cohen*, United States District Court for the Central District of

1 California, Southern Division, Case Number SACR15-00142. Per its terms, the twenty-seven
2 page written plea agreement was considered part of the record at the hearing as if the entire
3 agreement were read into the record of the proceeding. Respondent pled guilty to Count 1 of the
4 information and the Court found that "a factual basis has been laid and further [found] that the
5 plea is knowledgeable and voluntarily made." The Court ordered the plea accepted and entered.
6 Respondent was convicted of Making and Subscribing to a False Tax Return in violation of Title
7 26 of the United States Code, section 7206(1).

8 17. In the "Factual Basis" section of the plea agreement, on November 11, 2015,
9 Respondent admitted he was guilty of the offense to which he pled guilty and that the factual basis
10 supporting the conviction, although an incomplete recitation of the facts, included the following:

11 "Defendant admits that defendant is, in fact, guilty of the offense to which defendant
12 is agreeing to plead guilty. Defendant and the USAO agree to the statement of facts
13 provided below and agree that this statement of facts is sufficient to support a plea of guilty
14 to the charge described in this agreement and to establish the Sentencing Guidelines factors
15 set forth in paragraph 18 below but is not meant to be a complete recitation of all facts
16 relevant to the underlying criminal conduct or all facts known to either party that relate to
17 that conduct. Defendant is a board- certified orthopedic spinal surgeon who, between 2002
18 and 2013, performed spinal surgeries and related medical services at Pacific Hospital of
19 Long Beach in Long Beach, California ("Pacific Hospital"), among other hospitals.
20 Defendant is a resident of Irvine, California, and controls two corporate bank accounts
21 under the names Spine Care Center and Mitchell G. Cohen, M.D., Inc.

22 **"A. Kickbacks for Spinal Surgeries**

23 "Beginning as early as 2008, and continuing until at least 2013, defendant
24 accepted illegal kickback payments from Michael D. Drobot ("Drobot"), who owned and/or
25 operated Pacific Hospital, and Marketer A, in exchange for performing spine surgeries at
26 Pacific Hospital. Defendant, Drobot, Drobot's co- conspirators, and Marketer A concealed
27 the illegal kickback payments from defendant's patients and the insurance carriers that paid
28 for defendant's patient's services. Defendant and Drobot entered into bogus contracts

1 designed to disguise the illegal kickback payments from Drobot to defendant under which
2 defendant purported to perform services for, or receive 28 services from, Pacific Hospital
3 and other entities controlled by Drobot, when in fact few, if any, legitimate services were
4 exchanged.

5 "In particular, Marketer A was paid by Drobot and/or Pacific Hospital to,
6 among other duties, illegally induce doctors to perform spinal surgeries at Pacific Hospital
7 through the payment of kickbacks. Beginning in or around 2009, Marketer A paid
8 defendant between approximately \$5,000 and \$15,000 in kickbacks for every spinal fusion
9 surgery performed at Pacific Hospital. Marketer A paid kickbacks to defendant in the form
10 of checks and cashier's checks drawn from various corporate entities controlled by
11 Marketer A, and by cash. Between at least 2009 and 2012, defendant deposited kickback
12 payments from Marketer A primarily into defendant's Spine Care Center bank account.

13 "In 2012, Drobot and defendant agreed that Drobot, not Marketer A, would pay
14 defendant \$15,000 in kickbacks for each posterior lumbar interbody fusion surgery
15 performed at Pacific Hospital, and between \$5,000 and \$7,500 in kickbacks for each
16 cervical fusion spine surgery performed at Pacific Hospital, provided those surgeries were
17 performed using spinal hardware purchased from International Implants, LLC ("I2"), a
18 medical device distributor owned by Drobot. Drobot and defendant further agreed that
19 those kickback amounts would be reduced if defendant did not use I2 hardware in spinal
20 surgeries performed at Pacific Hospital. Defendant, Drobot, and Drobot's co-conspirators
21 monitored and tracked the number and type of surgeries performed by defendant at Pacific
22 Hospital, and the type of spinal hardware implanted in patients during those surgeries. In
23 order to disguise the illegal kickback payments from Drobot to defendant, defendant entered
24 into two bogus contracts with Drobot's business entities. First, in June 2012, defendant
25 entered into a Research, Product Development and Training Agreement with I2 (the "I2
26 Agreement").

27 "Under the I2 Agreement, defendant purported to provide consulting services to
28 I2 in exchange for a monthly payment of \$25,000. Defendant, however, provided few

1 legitimate consulting services to I2. Instead, the payments to defendant under the I2
2 Agreement were purely kickbacks for spinal surgeries performed at Pacific Hospital. In
3 addition to the I2 Agreement, defendant entered into an Outsourced Collections Agreement
4 with Pacific Hospital (the "Collection Agreement") in June 2012. The Collection
5 Agreement provided that defendant would assist Pacific Hospital in collecting its fees for
6 spinal surgeries from insurance carriers, and that in return Pacific Hospital would pay
7 defendant fifteen percent of the total amount collected. In reality, however, the collection
8 was done by Pacific Hospital staff, without assistance from defendant. The Collection
9 Agreement, like the I2 Agreement, was another mechanism through which Drobot paid
10 illegal kickbacks to defendant for spinal surgeries performed by defendant. As part of his
11 arrangement with Drobot, defendant agreed to perform spinal surgeries on patients referred
12 to defendant by other doctors who were also receiving kickbacks from Drobot.

13 "In particular, defendant held office hours in the medical offices of Doctor A to
14 consult with and perform surgeries on Doctor A's patients. Doctor A received kickback
15 payments from Drobot for patients whose surgeries were performed at Pacific Hospital by
16 defendant. Defendant did not receive a kickback payment for 28 surgeries performed on
17 Doctor A's patients, but was paid only his regular professional fee. In sum, from 2008 to
18 2013, Pacific Hospital billed insurance companies approximately \$15.8 million in claims
19 for spinal surgeries performed by defendant, including those for which kickbacks were paid
20 to defendant or another doctor. Defendant knew that it was illegal to accept the kickbacks
21 discussed above. Defendant also knew that, if the insurance carriers had known that the
22 spinal surgeries for which they were billed resulted from referrals induced by such
23 kickbacks, those insurance carriers would not have paid the claims or would have paid a
24 lesser amount. Moreover, defendant knew that, if his patients had known that he was
25 receiving such kickbacks, they may have chosen not to obtain the medical services
26 recommended, or may have chosen to be treated by different medical professionals or at a
27 different hospital. In total, defendant received approximately \$1,645,225 in illegal kickback
28 payments from Drobot and Marketer A between 2008 and 2013.

1 **"B. The Pharmacy Agreement**

2 "Beginning in or around 2004, defendant entered into an agreement with
3 California Pharmacy Management ("CPM"), an in-house dispensary management company
4 owned by Drobot, and later another Drobot entity Industrial Pharmacy Management ("IPM,"
5 and collectively with CPM, the "Dispensary Management Companies"), in which the
6 Dispensary Management Companies purported to manage defendant's in-office pharmacy in
7 return for fifty percent of the gross collections resulting from prescriptions filled at
8 defendant's pharmacy. In reality, the Dispensary Management Companies and/or Pacific
9 Specialty Physician Management, Inc. ("PSPM") , another company controlled by Drobot,
10 paid defendant varying amounts averaging between \$20,000 and \$40,000 per month as an
11 inducement to allow the Dispensary Management companies to operate defendant's in-
12 office pharmacy and to gain access to defendant's patients including, in particular,
13 defendant's worker's compensation payments. Defendant was paid monthly regardless of
14 the pharmacy's gross collections, which rarely, if ever, met or exceeded the monthly
15 payment made to defendant. At times, defendant was paid kickbacks through the
16 Dispensary Management Companies for spinal surgeries he referred to and performed at
17 Pacific Hospital.

18 **"C. Defendant's 2009 -2012 Individual Income Tax Returns**

19 "Between 2009 and 2012, defendant deposited the substantial majority of his
20 kickback payments into his Spine Care Center corporate bank account. Spine Care Center,
21 however, had no legitimate business purpose other than acting as the recipient entity for
22 defendant's illegal kickback payments. In 2009, 2010, 2011, and 2012, defendant caused
23 Spine Care Center to file a Corporation Income Tax Return, Form 1120, claiming the illegal
24 kickback payments as gross receipts of Spine Care Center. Defendant knew, however, that
25 the illegal kickback payments were not gross receipts of Spine Care Center, but instead
26 should have been reported as individual income on defendant's Individual Income Tax
27 Return, Form 1040 ("Form 1040"). Defendant further knew that there are no legitimate
28 business expenses or management fees associated with accepting kickback payments. For

1 the years 2009, 2010, 2011, and 2012, in Orange County, California, within the Central
2 District of California, defendant knowingly and willfully signed and filed, under penalty of
3 perjury, Form 1040s that did not report the illegal kickback payments as income, and
4 therefore substantially underreported defendant's total income. More specifically, defendant
5 failed to report the following amounts of individual income on defendant's Form 1040s
6 during the specified years: \$243,000 in 2009, \$214,100 in 2010, \$426,335 in 2011, and
7 \$394,611 in 2012. Had defendant properly reported this income on his Form 1040s,
8 defendant would have been assessed an additional \$402,139 in individual income tax. With
9 respect to tax year 2011 in particular, on February 21, 2012, defendant knowingly and
10 willfully signed and filed, under penalty of perjury, a Form 1040 that reported on line 22
11 that his total income was \$337,678, when in fact, as defendant knew, his true income was
12 substantially higher."

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Dishonest or Corrupt Acts)**

15 18. Respondent Mitchell Glenn Cohen, M.D. is subject to disciplinary action under
16 section 2234, subdivision (e), in that he engaged in numerous corrupt acts over a lengthy period of
17 time. The circumstances as set forth in the paragraphs 12 through 17 are incorporated herein.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(General Unprofessional Conduct)**

20 19. Respondent Mitchell Glenn Cohen, M.D. is subject to disciplinary action under
21 section 2234 in that he engaged in unprofessional conduct. The circumstances as set forth in the
22 paragraphs 12 through 18 are incorporated herein.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Medical Board of California issue a decision:

- 26 1. Revoking or suspending Physician's and Surgeon's Certificate Number G64294,
27 issued to Mitchell Glenn Cohen, M.D.;
- 28 2. Revoking, suspending or denying approval of Mitchell Glenn Cohen, M.D.'s authority

1 to supervise physician assistants, pursuant to section 3527 of the Code;

2 3. Ordering Mitchell Glenn Cohen, M.D., if placed on probation, to pay the Board the
3 costs of probation monitoring; and

4 4. Taking such other and further action as deemed necessary and proper.

5
6 DATED: August 11, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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